IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.Rev.Pet.No. 1108 of 2006()

CMP.4372/2005 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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REVN. PETITIONER: COMPLAINANT

P.K.SUNIL KUMAR,
S/O.SAMIKUTTY, PROPRIETOR,
M/S.S.S.MOVIES, NO.27, STADIUM COMPLEX,
KOZHIKODE.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SRI.C.S.SUNIL
SMT.C.G.PREETHA
SRI.M.PRAVEESH

RESPONDENTS: ACCUSED

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1. MALAYALAM COMMUNICATIONS LIMITED,
4/2382, CHANDRAGIRI, VIKRAMAPURAM HILLS,
KURAVANKONAM, THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR.

2. M/S.KAIRALI TELEVION,
A UNIT OF MALAYALAM COMMUNICATIONS LTD.,
THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR.

3. JOHN BRITAS, MANAGING DIRECTOR,
M/S,MALAYALAM COMMUNICATIONS LIMITED,
THIRUVANANTHAPURAM.

4. P.I.MOHAMMEDKUTTY @ MAMMOOTTY,
CHAIRMAN, MALAYALAM COMMUNICATIONS LIMITED,
THIRUVANANTHAPURAM DISTRICT.

5. SHIBU CHAKRAVARTHY,
PRODUCTION EXECUTIVE,
M/S.MALAYALAM COMMUNICATIONS LIMITED,

THIRUVANANTHAPURAM.

6. M/S.GEMINI COLOUR LABORATORY,
(GEMINI INDUSTRIES AND IMAGING LTD.),
N0.2 VEMBULI AMMANKOVIL STREET,
VIRUGAMBAKKOM, CHENNAI, REPRESENTED BY ITS
MANAGING DIRECTOR.

7. RAVISANKAR PRASAD,
MANAGING DIRECTOR, M/S.GEMINI COLOUR LABORATORY,
VIRUGAMBAKKOM, CHENNAI, REPRESENTED BY ITS
MANAGING DIRECTOR.

8. ALLWYN ANTONY, S/O.ANTONY,
AKKARIA APARTMENTS, AYYAPPANKAVU,
ERNAKULAM.

9. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.P.THAJUDEEN
SRI.MANSOOR.B.H.
BY PUBLIC PROSECUTOR SHRI KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 1108 OF 2006

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Dated this the 31st day of January, 2007

O R D E R

Petitioner in C.M.P. No.4372 of 2005 on the file of the Chief Judicial Magistrate, Kozhikode is the revision petitioner. This Criminal Revision Petition is filed against the order dismissing a complaint filed by the petitioner holding that Criminal Courts at Kozhikode have no territorial jurisdiction to try the case.

2. Petitioner is a producer of a Malayalam Movie by name "Malabaril Ninnoru Manimaran". Petitioner filed a complaint against first respondent, M/s. Malayalam Communications Limited, a company of which third respondent is the Managing Director. Second respondent is a Television Channel, a unit of first respondent being run under the control and supervision of respondents 3 and 4. Fifth respondent is the Production Executive who is responsible for the selection and telecast of various programmes and movies through the second respondent Channel. Sixth respondent is a Film Laboratory at Chennai and 7th respondent is its Managing Director, who is

responsible for the day to day affairs and conduct of the 6th respondent.

3. In the complaint it was averred that second respondent without any authority had telecasted the Malayalam Movie “Malabaril Ninnoru Manimaran” at 2.00 p.m. on 15.9.2005 and thereby violated the satellite right of the said Movie and hence respondents are liable to be prosecuted for the offence punishable under Sections 63, 65, 68 and 69 of the Copy Right Act, 1957 and Sections 403, 406, 420, 463, 464, 465, 468, 471, 109, 120(B) read with 34 IPC. Learned Magistrate took a view that if it is held that the court situated at the place wherein the film in question was telecasted will have jurisdiction to try the case, all courts in India will have jurisdiction to take cognizance of the offence. It was further held that the film in question was telecasted from Thiruvananthapuram and head office of second respondent is also at Thiruvananthapuram and the accused are residing within the territorial limits of the courts at Thiruvananthapuram, Ernakulam and Chennai. It was also held that Chief Judicial Magistrate Court at Kozhikode has no territorial jurisdiction to try the case and dismissed the complaint.

4. At the outset, I may point out that dismissal of the

complaint on the ground that court lacks territorial jurisdiction is illegal. Section 201 of the Criminal Procedure Code prescribes the procedure. Section 201 reads as follows:

> "201.- **Procedure by Magistrate not competent to take cognizance of the case**.- If the complaint is made to a Magistrate in writing who is not competent to take cognizance of the offence he shall return the same for presentation to the proper court within an endorsement to that effect and if the complaint is not in writing, direct the complaint to the proper court".

So it is evidently clear that the order passed by the learned Magistrate dismissing the complaint is illegal.

5. The case of the petitioner is that he is the producer of the Malayalam film "Malabaril Ninnoru Manimaran". A feature film is a Cinematograph film as defined under Section 2(f) of the Copyright Act. Section 2(f) reads as follows:

> "2(f). Cinematograph film means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as

> including any work produced by any process analogous to cinematography including video films".

The word "Cinematograph" is not defined in the Copyright Act. Section 2(c) of the Cinematograph Act defines Cinematograph. It reads as follows:

> "Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures".

Section 2(dd) of the Cinematograph defines film. It reads as follows:

> "2(dd) "filim" mean a cinematograph film".

6. When a Video Cassette Recorder is used for playing prerecorded cassettes of movies in the Television Screen, it is used as an appreciation for the representation of the moving picture. A Television is also an appliance capable of being used for reception of signs, signals and sounds falling within the meaning of cinematograph. A Compact Disc is also an appliance

used for recording feature film and various other programmes in the place of Video tape. So Video tapes and Compact Discs will come within the expression cinematograph film in view of the extended definition of the words “cinematograph film” used in Section 2(f) of the Copyright Act.

7. Section 2(dd) of the Copyright Act defines “broadcast”. It reads as follows:

> “2(dd). “Broadcast” means communication to the public”.

It is only an inclusive definition. Any publication to the public through wireless has been included to mean broadcast.

8. A video film broadcasted through a cable net could be watched by a large section of public in privacy at their homes. Such a broadcast is not a private communication but a broadcast which will come within the definition of communication to the public.

9. Section 2(ff) of the Copyright Act defines “communication to public”. It reads as follows:

> "2(ff). "Communication to public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available".

10. Communication via satellite which can be received by Dish Antenna or cable net work will amount to communication to public. So showing a video film on cable net work will amount to infringement of Copyright. In **Garware Plastics & Polyster Ltd. v. M/s. Telelink** (AIR 1989 Bombay 331), it was held as follows:

> "The viewers of a Cable T.V. network or those who receive such broadcast through a dishantenna to which their television sets are connected, are either residents of apartments in a building which has such a network or they may be residents of a locality which is covered by this facility ..... They can only be viewed as a portion of public".

It was also held thus:

> "The nature of the relationship between the owner of the copyright and the audience. The viewers cannot be considered as domestic viewers of the owner of the copyright, i.e., the plaintiffs. They must be considered as members of the public.
>
> The Copyright Act is meant to protect the owner of the copyright against unauthorised performance of his work, thereby entitling him to earn monetary gain from his intellectual property. The audience which watches such video films would have otherwise paid for watching the film. In fact, the audience does pay the defendants for watching the film. The author of the copyright is, therefore, directly affected as he is deprived of earnings from his intellectual property .... the defendants by showing the film over a video T.V. network are broadcasting the film or communicating it to a section of the public".

11. Section 51 of the Copyright Act deals with infringement of Copyright. Section 62 of the Copyright Act deals with the jurisdiction of the Civil Court to try suit or other civil proceedings arising under the provisions of the Copyright Act. Section 63 of the Copyright Act deals with offence of infringement of Copyright or other rights conferred by that Act. Section 69 of the Copyright Act deals with offences committed by Companies. Section 70 of the Copyright Act deals with taking cognizance of

an offence. There is no specific provision in the Copyright Act with regard to the place of trial. So place of trial is to be determined in accordance with the provisions contained in Sections 177 to 188 of the Criminal Procedure Code.

12. In **J.N. Bagga v. A.I.R. Ltd.** (AIR 1969 Bombay 302) similar question arose for consideration. The complainant in that case was a company. It filed five complaints against the accused before the Criminal Court at Nagpur alleging that the accused infringed copyrights belonging to the complainant company. The accused raised a contention that the Criminal Courts at Nagpur have no jurisdiction to try the case on the ground that the authors as well as the partners of the firm were residents of Allahabad. It was also contended that the accused firm had its registered office at Allahabad and writing of the book and publication of it have taken place at Allahabad.

13. A learned Single Judge of Bombay High Court after taking note of the fact that there is no specific provision in the Copyright Act with regard to the place of trial or where the complaint is to be filed regarding criminal offences held that place of trial is to be determined in accordance with the provisions contained in Sections 177 to 188 of the Criminal

Procedure Code. It was further held that since there was allegation in the complaint that the accused offered for sale or sold the books at Nagpur, the criminal courts at Nagpur had jurisdiction to entertain the complaint. It was held that those allegations were true or not a matter to be decided at the time of rial. I am in respectful agreement with the principles laid down in **J.N. Bagga's case** (supra).

14. Section 177 Cr.P.C. deals with ordinary place of enquiry and trial, which reads as follows:

> "177. **Ordinary place of inquiry and trial**.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed".

If any person by way of trade exhibits in public any infringing copies of the work at a place within the jurisdiction of Chief Judicial Magistrate Court at Kozhikode, the offence is committed at that place also. Section 178 of the Criminal Procedure Code is also relevant. It reads as follows:

> 178. **Place of inquiry or trial**.- a) When it is uncertain in which of several local areas an offence was committed, or

b) where an offence is committed partly in one local area and partly in another, or

c) where an offence is continuing one, and continues to be committed in more local areas than one, or

d) where it consists of several acts done in different areas,
it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

15. It is true that Head office of accused Nos. 1 and 2 are situated at Thiruvananthapuram and the 6th accused at Chennai. Accused Nos. 3 to 5 are stated to be at Thiruvananthapuram and the 7th accused at Chennai. The 8th accused is stated to be a resident of Ernakulam. But the real question arising for consideration is whether any cause of action arose at Kozhikode. There is a specific averment in the complaint that there was publication of the movie at Kozhikode. Whether that allegation is true or not is a matter to be decided at the time of trial. So the finding of the learned Chief Judicial Magistrate that only courts at Thiruvananthapuram, Ernakulam and Chennai have jurisdiction to try the offence alleged in the complaint is illegal. The impugned

order is unsustainable and is liable to be interfered with. I make it clear that it is open to the accused to bring out the fact at the time of taking evidence for complainant himself that no cause of action arose as no publication to public was effected within the jurisdiction of criminal courts at Kozhikode. If such a contention is raised that shall be considered and decided by the learned Chief Judicial Magistrate in accordance with law.

In the result, this Criminal Revision Petition is allowed. The order passed by the Chief Judicial Magistrate, Kozhikode dismissing C.M.P. No.4372 of 2005 is set aside. Learned Magistrate is directed to take the complaint back to file and dispose of the same in accordance with law.

K. PADMANABHAN NAIR, JUDGE.

vsv

"C.R."

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 1108 OF 2006

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O R D E R

31ST JANUARY, 2007